

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

**TZVIA WEXLER,**

**Plaintiff,**

**v.**

**CITY OF PHILADELPHIA, et al.,  
Defendants.**

---

:  
:  
:  
:  
:  
:  
:  
:  
:

**Civil Action  
No. 19-5760**

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, upon consideration of the Defendants' Motion to Compel, and any reply thereto, it is **HEREBY ORDERED** that the Motion is **GRANTED**.

It is **FURTHER ORDERED** that Plaintiffs shall provide:

1. The names of individuals likely to have discoverable information relevant to Plaintiff's claims, including Sivy Blume and Plaintiff's husband, who has yet to be named. Plaintiff specifically conceded she was familiar with the individual identified as Sivy Blume, pictured in the photograph with Plaintiff in Exhibit L, during her deposition.

2. The right to timely depose any individuals identified in response to Outstanding Request No. 1.

3. Any documentation in Plaintiff's possession confirming the date of the event hosted by Sivy Blume and featured in Exhibit L.

4. Plaintiff has not produced any expert reports from either provider identified in her Responses (Dr. Ofra Sharabani and Dr. Phillip Nimoityn), nor has Plaintiff produced any medical records from either provider. To the extent Plaintiff intends to call Dr.

Sharabani and/or Dr. Nimoityn at trial, Defendants request the right to timely depose said provider.

BY THE COURT:

---

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

**TZVIA WEXLER,**

**Plaintiff,**

**v.**

**CITY OF PHILADELPHIA, et al.,**

**Defendants.**

---

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**Civil Action  
No. 19-5760**

**DEFENDANTS' MOTION TO COMPEL**

Defendants, Charmaine Haynes-Hawkins, James Koenig, Kelly Keenan (collectively as “Defendants”), by and through the undersigned counsel, hereby file this Motion to Compel. In support of this motion, Defendants incorporates the attached Memorandum of Law. Defendants respectfully request that this Court issue an order: (1) The names of individuals likely to have discoverable information relevant to Plaintiff’s claims, including Sivy Blume and Plaintiff’s husband, who has yet to be named. Plaintiff specifically conceded she was familiar with the individual identified as Sivy Blume, pictured in the photograph with Plaintiff in Exhibit L, during her deposition; (2) The right to timely depose any individuals identified in response to Outstanding Request No. 1; (3) Any documentation in Plaintiff’s possession confirming the date of the event hosted by Sivy Blume; (4) Plaintiff has not produced any expert reports from either provider identified in her Responses (Dr. Ofra Sharabani and Dr. Phillip Nimoityn), nor has Plaintiff produced any medical records from either provider. To the extent Plaintiff intends to call Dr. Sharabani and/or Dr. Nimoityn at trial, Defendants request the right to timely depose said provider.

Date: February 18, 2021

Respectfully submitted,

/s/ Meghan E. Claiborne

Meghan E. Claiborne

Deputy City Solicitor

Pa. Attorney ID No. 315918

City of Philadelphia Law Department

1515 Arch Street, 14<sup>th</sup> Floor

Philadelphia, PA 19102

215-683-5447

meghan.claiborne@phila.gov

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

**TZVIA WEXLER,**

**Plaintiff,**

**v.**

**CITY OF PHILADELPHIA, et al.,  
Defendants.**

:  
:  
:  
:  
:  
:  
:  
:  
:

**Civil Action  
No. 19-5760**

---

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO COMPEL**

Plaintiff, Tzvia Wexler (“Plaintiff”), has filed a Complaint asserting claims against Defendants, Charmaine Haynes-Hawkins, James Koenig, Kelly Keenan (collectively as “Defendants”). Defendants now file this motion to compel (the “Motion”) seeking an order compelling Plaintiffs to provide the information outlined in the proposed order attached hereto.

**I. ARGUMENT**

Plaintiff commenced this litigation on December 6, 2019 (“Complaint”) [Dkt. 1]. To-date, Plaintiffs have not produced Rule 26 initial disclosures. Defendants propounded interrogatories and requests for production on July 31, 2020. Discovery Requests, attached as Exhibit A. Despite repeated requests, Plaintiff failed to respond to the Discovery Requests until February 3, 2021. In her responses (“Responses”), Plaintiff failed to provide basic information in her possession including photographs of the third officer present at Plaintiff’s arrest and photographs of Plaintiff’s injuries, or any medical records. Responses, attached as Exhibit B at Interrogatory Response No. 6, Request for Production Response No. 2. Despite not having produced initial disclosures, Plaintiff further declined to provide basic information concerning potential witnesses Plaintiff may call at trial. *Id.* at Interrogatory Response No. 22.

Moreover, despite repeated requests since August 2020, Plaintiff failed to appear for deposition until February 16, 2021- two (2) days before the end of the extended discovery deadline. Confirmation of Plaintiff's Deposition, attached as Exhibit C.

As a result of Plaintiff's failure to produce initial disclosures or to timely and sufficiently respond to the Discovery Requests or appear for depositions, Defendants find themselves on the eve of discovery with multiple outstanding requests for basic information.

**A. Timeline**

- July 31, 2020: Defendants propound Discovery Requests. Ex. A.
- August 31, 2020: Request for dates for Plaintiff's deposition. Aug. 31, 2020 Email, attached as Exhibit D.
- November 4, 2020: Notice of Plaintiff's Deposition for November 6, 2020. Nov. 4, 2020 Email, attached as Exhibit E.
- December 14, 2020: Request for responses to Discovery Requests and dates for Plaintiff's depositions. Dec. 14, 2020 Email, attached as Exhibit F.
- January 28, 2021: Email requesting responses to Discovery Requests and dates for Plaintiff's deposition. Jan. 28, 2021 Email, attached as Exhibit G.
- February 2, 2021: Email requesting responses to Discovery Requests and dates for Plaintiff's deposition. Feb. 2, 2021 Email, attached as Exhibit H.
- February 3, 2021: Plaintiff provides Responses. Ex. B.
- February 4, 2021: Email requesting dates for Plaintiff's deposition. Feb. 4, 2021 Email, attached as Exhibit I.
- February 5, 2021: Email requesting supplemental responses to Plaintiff's Responses, including descriptions of any other officers known by Plaintiff to have present during Plaintiff's arrest and requesting dates for Plaintiff's deposition. Feb. 5, 2021 Email, attached as Exhibit J.
- February 8, 2021: Request for dates for Plaintiff's deposition. Feb. 8, 2021 Email, attached as Exhibit K.
- February 16, 2021: Plaintiff sits for deposition. Ex. C. During Plaintiff's deposition she described other officers present, referenced her husband as potentially having information relevant to her damages and confirmed that she had photographs taken on her phone of the scene that had never been produced. Additionally, Plaintiff testified that she could not leave her house for 3 months and was presented with a photograph online purported to show Plaintiff socializing at an for Plaintiff's employer purportedly hosted by "Sivy Blume" roughly a month after the incident; Plaintiff indicated she could not remember the date of the event and had no documents or information in her possession to confirm the actual date of the event. Event Photograph, attached as Exhibit L.
- February 17, 2021: Defendants request never-produced Initial Disclosures to confirm that Plaintiff has not failed to identify any additional individuals with knowledge potentially relevant to the incident. Feb. 17, 2021 Email, attached as Exhibit M.

- February 18, 2021: Defendants again request Initial Disclosures “including documents you or your client have in your possession relevant to the claims/defenses and the names/contact information of any individuals with knowledge of the incident,” and requesting confirmation that Plaintiff will not object to the depositions of any newly identified individuals. Feb. 18, 2021, attached as Exhibit N.

## **B. Defendants’ Outstanding Requests**

Defendants diligently attempted to timely complete discovery prior to the close of discovery. The outstanding information sought by Defendants is material to defending against Plaintiff’s claims. Defendants should not be prejudiced because the failure to timely complete discovery is the result of Plaintiff’s repeat failures to provide basic, material information including the names and contact information of individuals with discoverable information, the descriptions and/or photographs of material witnesses, or to appear for deposition. As a result, Defendants seek the following information:

1. The names of individuals likely to have discoverable information relevant to Plaintiff’s claims, including Sivy Blume and Plaintiff’s husband, who has yet to be named. Plaintiff specifically conceded she was familiar with the individual identified as Sivy Blume, pictured in the photograph with Plaintiff in Exhibit L, during her deposition.
2. The right to timely depose any individuals identified in response to Outstanding Request No. 1.
3. Any documentation in Plaintiff’s possession confirming the date of the event hosted by Sivy Blume and featured in Exhibit L.
4. Plaintiff has not produced any expert reports from either provider identified in her Responses (Dr. Ofra Sharabani and Dr. Phillip Nimoityn), nor has Plaintiff produced any medical records from either provider. To the extent Plaintiff intends

to call Dr. Sharabani and/or Dr. Nimoityn at trial, Defendants request the right to timely depose said provider.

## **II. CONCLUSION**

For the foregoing reasons, Defendants seek an order in the attached form.

Date: February 18, 2021

Respectfully submitted,

/s/ Meghan E. Claiborne  
Meghan E. Claiborne  
Deputy City Solicitor  
Pa. Attorney ID No. 315918  
City of Philadelphia Law Department  
1515 Arch Street, 14<sup>th</sup> Floor  
Philadelphia, PA 19102  
215-683-5447  
meghan.claiborne@phila.gov



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

**TZVIA WEXLER,**

**Plaintiff,**

**v.**

**CITY OF PHILADELPHIA, et al.,**

**Defendants.**

---

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**Civil Action  
No. 19-5760**

**LOCAL RULE 26.1 CERTIFICATION**

Pursuant to Local Rule 26.1, the undersigned, Meghan E. Claiborne, Esq., hereby certifies that after reasonable effort, I was unable to resolve the disputes concerning Plaintiffs' discovery deficiencies.

Defendants have outlined the attempts to obtain said information in the attached motion and the records of such communications are attached hereto.

Defendants therefore request this court grant the above Motion to Compel.

Date: February 18, 2021

Respectfully submitted,

/s/ Meghan E. Claiborne

Meghan E. Claiborne  
Deputy City Solicitor  
Pa. Attorney ID No. 315918  
City of Philadelphia Law Department  
1515 Arch Street, 14<sup>th</sup> Floor  
Philadelphia, PA 19102  
215-683-5447  
meghan.claiborne@phila.gov

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

**TZVIA WEXLER,**

**Plaintiff,**

**v.**

**CITY OF PHILADELPHIA, et al.,**

**Defendants.**

---

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**Civil Action  
No. 19-5760**

**CERTIFICATE OF SERVICE**

I hereby certify that on the date below, the Defendant's Motion to Compel was filed via the Court's electronic filing system and is available for downloading.

Date: February 18, 2021

/s/ Meghan E. Claiborne  
Meghan E. Claiborne  
Deputy City Solicitor  
Pa. Attorney ID No. 315918  
City of Philadelphia Law Department  
1515 Arch Street, 14<sup>th</sup> Floor  
Philadelphia, PA 19102  
215-683-5447  
meghan.claiborne@phila.gov